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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,457	10/25/2001	Jay E. Bauer	113611-002	4061
24573	7590	11/14/2005	EXAMINER	
BELL, BOYD & LLOYD, LLC PO BOX 1135 CHICAGO, IL 60690-1135			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 11/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,457

Applicant(s)

BAUER ET AL

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-24 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 8/22/05, applicant amends claim 1 to add the limitation "up to about 5 days in an unfrozen condition under refrigerated condition". The limitation of "about 5 days" is not disclosed in the specification. Page 13 discloses "up to 5 days", not about 5.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the limitation of "about 5 days" is vague and indefinite. It is not known what time frame would be cover under the language about 5 days and the specification does not shed any meaning to the phrase because it discloses up to 5 days, not about 5 days.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiffmann.

Schiffmann discloses a method for proofing cut pieces of yeast-containing dough and dough product obtained from such method. The method comprises the steps of forming a dough by mixing a dry mix with water and yeast, forming the dough into shaped pieces and proofing the pieces by passing into a first zone for proofing and then

Art Unit: 1761

into a second zone for further proofing. The temperature of the dough leaving the first zone is about 100 degree F and the temperature of the dough leaving the second proofing zone is about 120 degree F. The dough is removed from the proofing field before any portion of the dough has reached a temperature at which yeast is killed. The proofing is done in oven in which the ambient temperature is maintained at 100-130 degree F to insure the proper formation of a gas-retaining skin of the proofed dough. During the first proofing, appreciable gassing of the yeast take place and more gas is generated during the second proofing. The method is done by passing the dough pieces on a conveyor belt through the different zones. The dry mix has the composition as set forth on top of column 5. (see columns 2,5 and col. 6 lines 73-75)

Schiffmann does not disclose the dough can be stored in frozen condition and in refrigerated condition for up to about 5 days, packaging in presence of oxygen, adding gluten and ascorbic acid.

The limitation of " a superproofed skin and effective for inactivating at least some yeast on the skin" does not define over Schiffmann et al because they heat the dough to within the temperature range of 100-130 degree F. Applicant discloses on page 10 that the superproofing step is done when the dough product is quickly heated to a temperature of about 120-160 degree F. The temperature disclosed by Schiffmann et al falls within this range. Thus, any result obtained from such heating will obviously be present in the Schiffmann et al dough. With respect to the difference in the temperature in claim 1, it is a difference in the processing step and does not determine the patentability of the product. As disclose on page 10 of the specification, the

Art Unit: 1761

superproofed skin can be obtained with temperature lower than 140 degree F. The first and second proofings disclosed by Schiffmann et al are equivalent to the claimed proofing and superproofing. The yeast in the Schiffmann et al process is not killed, thus, it is obvious that live yeasts are still in the dough and that further expansion will take place upon baking. It is obvious gas pockets formed with the dough in the Schiffmann et al process because the dough comprises yeast and undergoes proofing. Since Schiffmann et al disclose a dough product comprising essentially the same format and ingredients as the claimed dough, it is obvious the dough is capable of storage at freezing and refrigerating condition. It would have been obvious to one skilled in the art to package the Schiffmann et al dough when the product is intended for commercial distribution. Such packaging is well known in the art. It would also have been obvious to one to store the dough under freezing condition to have long term storage. Such process is well known in the art as exemplified in the prior art to Benjamin et al and Sluimer submitted by applicant. Freezing or packaging under modified gas packaging are two known methods to extend the shelf life of food product. When the product is stored under freezing condition, modified gas packaging is not necessary and it is obvious the product can be packaged under atmospheric condition which inherently includes the presence of oxygen. It would also have obvious to one skilled in the art to add ascorbic acid because it is a common dough additive and it also serves to give the product additional vitamin. It would also have been obvious to add gluten to increase the protein source: Schiffmann et al teach to add additional protein source because the dough contains egg yold, soy flour and dry milk. The selection of a

Art Unit: 1761

different protein would have been an obvious matter of choice depending on the taste, flavor and texture wanted. Since the Schiffmann et al dough has a skin, it is inherently capable of being up through the use of suction cup.

Claims 11-13 and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gulstad et al.

Gulstad et al disclose a processes for preparing a dough. The process comprises the steps of preparing a dough containing yeast, proofing the dough and heating the dough to a temperature of about 160 degree F and packaging a the dough without further heating. Example III discloses a procedure for making yeast leavened dough; it shows the dough is proofed at a temperature of about 80-90 degree F. (see col. 3 lines 24-35 and example 3)

Gulstad do not specifically disclose superproofing, maintaining the dough in a humidity controlled environment, using different or single piece of equipment, using an oven having plurality of zone, the step of lifting the dough after the suerproofing, adding at least one dough strengthener, freezing and thawing the dough in the refrigerator.

The step of heating to a temperature of about 160 degree F is equivalent to the claimed superproofing step. The disclosure of about 160 degree F suggests the claimed limitation of less than 160 degree; it would have been obvious to one skilled in the art to vary the temperature a little because about 160 suggests that the temperature does not have to be exactly at 160 and can be 159.2, 159.3 etc.. which is less than 160 degree. Since the dough undergoes proofing, it is obvious carbon dioxide is produced and cause expansion. It would have been obvious to one skilled in the art to maintain a

Art Unit: 1761

humidity controlled environment during proofing because such parameter is known in proofing any dough product. As to the type of equipment used, it would have been obvious to one skilled in the art to use any type of equipment as long as the required steps can be carried out. Applicant has not shown any unexpected result or criticality in the claimed equipment. It would have been obvious to use any device to carry out the method; the type of equipment used does not affect the step or the outcome of the product. It would have been obvious to add a dough strengthener such as gluten and ascorbic acid because they are well known dough additive. Adding an additive for its art-recognized function would have been obvious to one skilled in the art. While Gulstad disclose the dough is stable as ambient temperature, it would have been obvious to one to freeze the product to further prolong the storage time and integrity of the product. For example, it is known bread can be stored at room temperature; however, it will mold at room temperature much faster than when it is stored in the refrigerator or freezer. It is a general accepted fact that food product will last longer in the freezer or refrigerator even though such product can be stored at room temperature. When the product is frozen, it would have been obvious to thaw the product in the refrigerator to prevent any possibility of microbial contamination or to thaw the product in the refrigerator if it does not need to be consumed immediately.

Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

There is no suggestion in Gulstad et al to heat the dough in the time range claimed.

In the response filed 8/22/05, applicant argues Schiffmann does not describe or suggest a dough product with a superproofed skin nor does Schiffmann describe or suggest a dough which can be stored unfrozen for up to 5 days. This argument is not persuasive. Applicant discloses on page 10 that the superproofing step is done when the dough product is quickly heated to a temperature of about 120-160 degree F. The temperature disclosed by Schiffmann et al falls within this range. Thus, any result obtained from such heating will obviously be present in the Schiffmann et al dough. With respect to the difference in the temperature in claim 1, it is a difference in the processing step and does not determine the patentability of the product. As disclosed on page 10 of the specification, the superproofed skin can be obtained with temperature lower than 140 degree F. The first and second proofings disclosed by Schiffmann et al are equivalent to the claimed proofing and superproofing. The yeast in the Schiffmann et al process is not killed, thus, it is obvious that live yeasts are still in the dough and that further expansion will take place upon baking. Since the dough contains yeast and is subjected to the same steps of proofing and superproofing as claimed, it is inherent the dough is capable of storage in the refrigerator for up to 5 days. Also, up to 5 day include 1 hour, 2 minutes, 40 minutes etc...; any dough can be stored in the refrigerator for that length of time. Applicant argues Schiffmann could not teach the claimed superproofing condition. With respect to the product, such difference does not determine the patentability of the product because it is a difference in the processing

Art Unit: 1761

step. As disclosed by applicant, the superproofed skin is obtained with temperature that is lower than the range claimed. Applicant further argues Schiffmann only discusses shelf life of the finished products. While Schiffmann teaches to further process the dough, there is no disclosure that the dough has to be processed to finished product. It would have been obvious to one skilled in the art to freeze the dough if it is not used in a short time. This is well known in the art.


Applicant's arguments filed 8/22/05 with respect to claims 1-10 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 3, 2005


LIEN TRAN
PRIMARY EXAMINER
